

Attorney Docket No.: F7720(V)
Serial No.: 10/565,118
Filed: June 19, 2006
Confirmation No.: 6151

REMARKS

Reconsideration of the application is respectfully requested.

The claims have been rejected as obvious over WO 03/003981 (Smith).
Applicants respectfully traverse the rejection.

Applicants' arguments focus on the facts that:

- Smith teaches to use more zinc than iron, and applicants claim the opposite
- Applicants' invention focuses on children, and the nutrients do different things in children's brain than in adult brains.

Ratio

Smith refers to the presence of these compounds only as two of the many optional components. Hence, saying selecting zinc and selecting iron is obvious over Smith, seems to be based only on hindsight analysis: only now the study was published, one would select these compounds, not before. Additionally, the ratio that Smith consistently suggests is exactly opposite as what is currently claimed. In the only example (table 1, page 21) of Smith the ratio iron: zinc is 0.5:1, and not 2:1 to 5:1. This is also in line with the general amounts disclosed on page 12 (for iron 1-18 mg and zinc 5-30 mg), where more zinc (about twice the amount) is suggested than iron. So if Smith teaches anything, it would be that more zinc than iron should be used. Choosing the upper level for iron from Smith and combining that with the lower level of zinc from Smith, as the Examiner does, is again something one can do only with hindsight of the presently claimed invention.

Age of target group: children vs. adults

Most references in Smith are about brain functioning in adults and elderly: e.g. page 2 line 27, page 6 line 6-7, page 7 line 26, page 8 lines 10-11, page 8 line 27, and in fact only two references relate to children specifically; page 3 line 11 and page 10 line 24.

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Clearly the focus for the unbiased outsider is on a mature brain. A mature brain is no longer a brain which is being built, but a brain which is broken down, and dietary requirements to slow down (consequences of) a brain which is broken down are different from dietary requirements of a brain which is still in the phase of being build up (in children up to e.g. 18 years). Micronutrients are not just for functioning, they are needed as building blocks.

Arguing that the presently claimed subject matter, which is limited to:

- two specific minerals,
- in a specific ratio,
- for a specific age group (which is not a mere arbitrary selection, see paragraph above), is obvious over Smith seems to be based on hindsight. Such is not a correct way to judge obviousness.

Additionally, Smith does not give any evidence for the composition to be effective in brain functioning, whereas we have provided evidence (the article on NEMO study previously submitted).

In light of the above remarks, it is respectfully requested that the rejection be reconsidered and withdrawn and the application be allowed to issue.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,


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